

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA)	
<u>ex rel.</u> JOHN STONE,)	
)	
Plaintiff,)	Honorable James B. Zagel
)	
v.)	Civil Action No: 1:09-cv-04319
)	
OMNICARE, INC.,)	Magistrate Morton Denlow
)	
Defendant.)	
_____)	

**OMNICARE, INC.’S MOTION TO DISMISS COUNTS 1 THROUGH 18 OF
RELATOR’S SECOND AMENDED COMPLAINT**

Defendant Omnicare, Inc. (“Defendant” or “Omnicare”) by and through its undersigned counsel respectfully moves to dismiss Counts 1 through 18 of Relator’s Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, pursuant to Federal Rule of Civil Procedure 9(b) for failure to plead fraud with particularity, and pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction with regard to the claims brought under certain state statutes.

Defendant submits the accompanying Memorandum of Law in Support of Its Motion to Dismiss Counts 1 Through 18 of Relator’s Second Amended Complaint (“Memorandum”). In support of this motion, Defendant states as follows:

1. Relator John Stone filed his Second Amended Complaint on May 29, 2012 on behalf of himself, the United States, and several Named States, purporting to allege claims under the Federal False Claims Act, 31 U.S.C. § 3729 *et seq.* (“FCA”), and several state false claims acts.

2. As explained in the accompanying Memorandum, Counts 1 through 18 fail to state a claim upon which relief can be granted because Relator has not alleged how any claims Defendant submitted were false for purposes of the False Claims Act or that Omnicare knew that claims were false at the time they were submitted. Moreover, Counts 1 through 18 are not pled with the particularity required by Fed. R. Civ. P. 9(b).

3. Further, certain of Relator's state law claims should be dismissed because he has failed to allege compliance with the procedural requirements of the statutes that allow him to bring suit as a *qui tam* plaintiff and/or the recently enacted statutes were not in effect at the time of some or all of the alleged fraud.

4. For the reasons stated above, and as explained in greater detail in the Memorandum, Counts 1 through 18 of Relator's Second Amended Complaint fail as a matter of law and should be dismissed.

5. As any further amendment to the Complaint would be futile, Counts 1 through 18 of Relator's Second Amended Complaint should be dismissed with prejudice.

WHEREFORE, Defendant hereby respectfully requests that the Court dismiss Counts 1 through 18 of Relator's Second Amended Complaint with prejudice.

Dated: June 28, 2012

Respectfully submitted,
Counsel for Defendant Omnicare, Inc.

/s/ Steven A. Miller

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June, 2012, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and for transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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